

Atty. Dkt. No. 029318-0988  
Appln. No. 10/692,855

### REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

#### I. Status of the claims

Claims 1-135, 137-139, 185, 240 and 295 are cancelled without disclaimer or prejudice thereof.

The following claims are currently being amended. The amendments add no new matter.

136, 145, 147-148, 164-167, 174-182;

194, 200, 202-203, 219-222, 229-237;

294, 255, 257-258, 274-277, 284-292;

252, 254.

Independent claims 136, 194 and 249 have been amended to recite "less than" instead of "less than about." Support for this amendment can be found in original claims 136, 194 and 249. Claims 136, 194 and 249 have also been amended to recite "[a] method of treating a condition selected from the group consisting of hypercholesterolemia, hypertriglyceridemia, coronary heart disease, cardiovascular disorders, peripheral vascular disease, symptomatic carotid artery disease, mixed dyslipidemia, and increased risk of pancreatitis ...." Support for this amendment can be found in original claims 158, 240 and 295, and at page 36, lines 14-23 (paragraph [0156] of publication 2004/0058009).

Claims 252 and 254 have been amended to change claim dependency.

The remaining dependent claims in each set (e.g., 145, 147-148, 164-167, 174-182, etc.) have been amended to recite "less than" or "at least" instead of "less than about" or "at least about." Support for this amendment can be found in the corresponding original claims.

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Claims 304-465 and claims 466-539 are being added.

New claims 304-465 find support in original claims 136-303. Original claims 136-303 recited "less than about..." or "at least about..." As noted above, amended claims 136-303 now recite "less than ..." or "at least..." and new claims 304-467 recite "about...."

The table below is provided to illustrate the relationship among these claims.

Previously presented or currently amended claims: (independent) / dependents	Language from independent claim	New claims	Language from independent claim
(136) / 137-193	"D50 particle size of <u>less than</u> 500 nm"	(304) / 305-357	"D50 particle size of <u>about</u> 500 nm"
(194) / 195-248	"mean particle size of <u>less than</u> 500 nm"	(358) / 359-411	"mean particle size of <u>about</u> 500 nm"
(249) / 250-303	D90 particle size of <u>less than</u> 700 nm"	(412) / 413-467	D90 particle size of <u>about</u> 700 nm"

New claims 466-539 correspond to the claims in column 1, as illustrated in the table below. The language of claims 466-539 that differs from the corresponding claim of column 1 is presented in column 4. Support for the new claims and claim amendments can be found in the original claims which included the "less than about" or the "at least about" language.

Previously presented or currently amended or new claims:	Language in claims	New claim	Language in claims
145, 147-148; 174-178	"less than" "at least"	466-468; 469-473	"about" "about"
200, 202-203; 229-233	"less than" "at least"	474-476; 477-481	"about" "about"
255, 257-258; 284-288	"less than" "at least"	482-484; 485-489	"about" "about"
310, 321-313; 339-343	"about" "about"	514-416; 417-521	"less than" "at least"
364, 366-367; 393-397	"about" "about"	522-524; 525-529	"less than" "at least"

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418, 420-421; 447-451	"about" "about"	530-532; 533-537	"less than" "at least"
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As neither the claim amendments nor the new claims add new matter, entry and examination thereof is respectfully requested.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 136-184, 186-239, 241-294 and 296-539 are now pending in this application.

## **II. Claim rejection – non-statutory double patenting**

Claims 136 and 140-303 are provisionally rejected on the ground of non-statutory obviousness-type double patenting as allegedly being unpatentable over claims 136, 140-178 and 183-331 of co-pending Application No. 10/444,066. A terminal disclaimer is filed herewith; accordingly, the rejection is obviated and reconsideration and withdrawal are respectfully requested.

## **III. Claim rejection – 35 U.S.C. § 112, second paragraph**

Claims 136 and 140-303 are rejected under 35 U.S.C. § 112, second paragraph, as allegedly failing to distinctly point out and claim the subject matter which applicant regards as the invention. First, the Office Action asserts that the phrase "*at least about*" is unclear, and second, the Office Action asserts that the claims relate to a method of treatment, yet no disease or condition is recited. (Office Action at page 3).

Andrea Small spoke with Examiner George on August 21, 2007. They discussed claim rejections and possible amendments. Applicants respectfully traverse the rejection; however, solely to advance prosecution, the claims have been amended.

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Claims 136-303 have been amended to recite "at least" or "less than" instead of "at least about" or "less than about" while new claims 304-467 recite "about." Additionally, the claims have been amended to recite conditions that may be treated by the claimed methods. Additionally, all new claims recite either "at least," "less than," or "about."

Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

#### IV. Conclusion

The present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

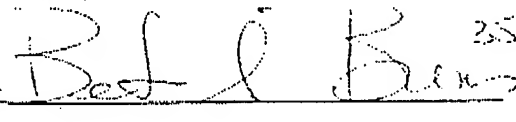
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

August 29, 2007

By

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